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16
17 **UNITED STATES DISTRICT COURT**
18
CENTRAL DISTRICT OF CALIFORNIA

19 COURTNEY TOLBERT, on behalf of
20 himself and on behalf of all others
21 similarly situated,

22 Plaintiff,

23 vs.

24 ROCKET MORTGAGE, LLC, a
25 Michigan Limited Liability Company;
26 and DOES 1-25, inclusive,

27 Defendants.

28 Case No.:

**NOTICE OF REMOVAL OF ACTION
TO THE UNITED STATES DISTRICT
COURT FOR THE CENTRAL
DISTRICT OF CALIFORNIA
PURSUANT TO 28 U.S.C. §§ 1332,
1441, 1446, and 1453 (CAFA)**

*[Filed concurrently with Declaration of
Eric J. Gitig, Declaration of Amy
Courtney; Civil Case Cover Sheet; Notice
of Interested Parties; and Corporate
Disclosure Statement]*

Complaint Filed: June 21, 2023

29
**TO THE HONORABLE CLERK OF THE UNITED STATES DISTRICT
30 COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, PLAINTIFF
31 COURTNEY TOLBERT, AND PLAINTIFF'S ATTORNEYS OF RECORD:**

32 PLEASE TAKE NOTICE that Defendant ROCKET MORTGAGE, LLC
33 ("Defendant") hereby invokes this Court's jurisdiction under the provisions of 28 U.S.C. §§
34 1332, 1441, 1446 and 1453, and removes the above-entitled action to this Court from the
35

1 Superior Court of the State of California in and for the County of Riverside based on the Class
 2 Action Fairness Act of 2005 (“CAFA”). In support thereof, Defendant asserts the following:

3 **SERVICE AND PLEADINGS FILED IN STATE COURT**

4 1. On June 21, 2023, Plaintiff COURTNEY TOLBERT (“Plaintiff”) filed an
 5 unverified Class Action Complaint against Defendant in the Superior Court of the State of
 6 California for the County of Riverside, entitled *COURTNEY TOLBERT, on behalf of*
himself and on behalf of all others similarly situated, vs. ROCKET MORTGAGE, LLC; and
DOES 1-25, inclusive, Case No.: CVRI2303158, which sets forth the following seven
 9 causes of action: (1) Unpaid Minimum Wage; (2) Unpaid Overtime and Double Time; (3)
 10 Improper Meal Periods; (4) Improper Rest Periods; (5) Unlawful Deductions; (6) Improper
 11 Wage Statements; (7) Wages Not Paid Upon Separation, (8) Failure to Reimburse
 12 Expenses; and (9) Unfair Competition. (Declaration of Eric J. Gitig (“Gitig Decl.”) at
 13 Exhibit “A.”) A true and correct copy of the Summons, Complaint, and Notice of Service
 14 of Process, and other related court documents received by Defendant’s counsel are attached
 15 as Exhibit “A” to the Gitig Declaration. As stated in paragraph 38 of the Complaint,
 16 Plaintiff brought this action on behalf of himself and a putative class consisting of: “All
 17 individuals who have been employed or are currently employed by Defendants, as non-
 18 exempt employees dating back four years from June 19, 2019 to the present date
 19 [excluding] Defendants in this action, any entity in which the Defendants have a controlling
 20 interest, any officers, directors, and shareholders of the Defendants, and any legal
 21 representatives, heirs, successors, and assigns of the Defendants.”

22 2. Plaintiff served Defendant with a copy of the Summons and Complaint on June
 23, 2023. (Gitig Decl. at ¶ 2, “Exhibit A.”)

24 3. On July 24, 2023, Defendant filed and served an Answer to the Complaint in the
 25 Riverside Superior Court, making a general denial as permitted by California Code of Civil
 26 Procedure § 431.30(d) and asserting various affirmative defenses. (*Id.* at ¶ 3, “Exhibit B.”) A
 27 true and correct copy of Defendant’s Answer is attached as Exhibit “B” to the Gitig Declaration.
 28

4. As of the date of this Notice of Removal, Exhibits "A" and "B" to the Gitig Declaration constitute all of the pleadings filed or received by Defendant in this matter. (*Id.* at ¶ 4.)

TIMELINESS OF REMOVAL

5. This Notice of Removal has been filed within 30 days after Defendant was served with a copy of the Summons and Complaint on June 23, 2023. (*Id.* at ¶ 2.) Therefore, it has been filed within the time-period mandated by 28 U.S.C. § 1446(b). *Murphy Bros. v. Michetti Pipe Stringing*, 526 U.S. 344, 354 (1999); *see also* California Code of Civil Procedure § 415.30(b); *see Sheikh v. Cisco Sys.*, No. C-07-00262 RMW, 2007 U.S. Dist. LEXIS 104742, at *3 (N.D. Cal. June 11, 2007).

VENUE IS PROPER

6. This action was filed in the Superior Court in and for the County of Riverside. Thus, venue of this action properly lies in the United States District Court for the Central District of California pursuant to 28 U.S.C. §§ 84(c)(1) and 1441(a). Venue of this action is also proper pursuant to 28 U.S.C. § 1391, which provides that an action may be venued in a judicial district where a substantial part of the events or omissions giving rise to the claim occurred, and where, based on information and belief, the plaintiff resides. The Complaint asserts “Defendant’s obligations and liabilities to Plaintiff arose in Riverside County, California...” (See Gitig Decl. at ¶ 2, Exhibit “A” [“Complaint”] at ¶ 5.)

REMOVAL IS PROPER BASED ON CLASS ACTION FAIRNESS ACT

7. Removal of this action is proper under CAFA, 28 U.S.C. §§ 1332 *et seq.* Section 4 of CAFA, 28 U.S.C. § 1332(d)(2), has been amended to read, in relevant part:

The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which – (A) any member of a class of plaintiffs is a citizen of a State different from any defendant.

8. In addition, CAFA provides for jurisdiction in the district courts where the proposed class involves 100 or more members, or where the primary defendants are not States, State officials, or other governmental entities. (28 U.S.C. § 1332(d)(5).)

1 9. As set forth below, this is a civil action over which this Court has original
 2 jurisdiction under 28 U.S.C. § 1332(d), in that it is a civil action filed as a class action involving
 3 more than 100 members, and – based on the allegations in the Complaint – the matter in
 4 controversy exceeds the sum of \$5,000,000, exclusive of interest and costs, and Plaintiff is a
 5 citizen of a state different from Defendant. (See 28 U.S.C. §§ 1332(d) and 1453.) Further,
 6 Defendant is not a State, State official, or other governmental entity.

7 **A. The Putative Class Contains More Than 100 Members.**

8 10. Defendant's records identify in excess of 100 individuals, including Plaintiff,
 9 who have been employed by Defendant as non-exempt employees in the State of California
 10 during the "Putative Class Period" between June 21, 2019 and the present (collectively
 11 referred to herein as "Putative Class Members" or the "Putative Class"). (Declaration of
 12 Amy Courtney ["Courtney Decl."] at ¶¶ 7-9.) Accordingly, the numerosity requirement for
 13 jurisdiction under CAFA is satisfied.

14 **B. None of the Named Defendants Are Government Entities.**

15 11. Defendant is neither a State, a State official, or any other government entity.
 16 (Courtney Decl. at ¶ 3.)

17 **C. Minimal Diversity is Satisfied Under CAFA.**

18 12. CAFA's diversity requirement is satisfied when there is minimal diversity, *i.e.*,
 19 when at least one member of a class of plaintiffs is a citizen of a state in which none of the
 20 defendants are citizens. 28 U.S.C. § 1332(d)(2); *see Snyder v. Harris*, 394 U.S. 332, 340
 21 (1969) ("if one member of a class is of diverse citizenship from the class' opponent, and no
 22 nondiverse members are named parties, the suit may be brought in federal court even though
 23 all other members of the class are citizens of the same State as the defendant."); *United Steel,*
 24 *Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union, AFL-*
 25 *CIO, CLC v. Shell Oil Co.*, 602 F.3d 1087, 1090-91 (holding that to achieve its purposes,
 26 CAFA provides expanded original diversity jurisdiction for class actions meeting the minimal
 27 diversity requirement set forth in 28 U.S.C. § 1332(d)(2)); *Bradford v. Bank of Am. Corp.*,
 28 No. CV 15-5201-GHK (JCx), 2015 U.S. Dist. LEXIS 120800, at *13 (C.D. Cal. Sep. 10,

1 2015) (“[defendant] needed only to establish that one plaintiff was a citizen of a different state
 2 from any one defendant at the time of removal.”).

3 13. Citizenship of the parties is determined by their citizenship status at the
 4 action’s commencement. *Mann v. City of Tucson*, 782 F.2d 790 (9th Cir. 1986).

5 14. For individuals, citizenship is determined by a person’s domicile. *Lew v. Moss*,
 6 797 F.2d 747, 749 (9th Cir. 1986); *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th
 7 Cir. 2001) (“A person’s domicile is her permanent home, where she resides with the intention
 8 to remain or to which she intends to return.”). While residence and citizenship are not the
 9 same, a person’s place of residence is *prima facie* evidence of his or her citizenship. *State*
 10 *Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 519-20 (10th Cir. 1994) (allegation by party
 11 in state court complaint of residency “created a presumption of continuing residence in
 12 [state] and put the burden of coming forward with contrary evidence on the party seeking to
 13 prove otherwise”; *see also Smith v. Simmons*, 2008 U.S. Dist. LEXIS 21162, at *22 (E.D.
 14 Cal. 2008).) Furthermore, a person’s intention to remain may be established by his or her
 15 place of employment. *Youn Kyung Park v. Holder*, 572 F.3d 619, 625 (9th Cir. 2009); *see*
 16 *also Francisco v. Emeritus Corp.*, No. CV 17-02871-BRO (SSx), 2017 U.S. Dist. LEXIS
 17 90131, at *10 (C.D. Cal. June 12, 2017) (“Plaintiff’s residence and employment in
 18 California are sufficient evidence of his intent to remain in California.”).

19 15. Defendant is informed and believes, that Plaintiff was, at the time this action was
 20 commenced, and still is, a resident and citizen of the State of California. (Courtney Decl. at ¶ 5.)

21 16. For purposes of removal under CAFA, the citizenship of a limited liability
 22 company is analyzed as an “unincorporated association” under Section 1332(d)(10). *Ferrell*
 23 *v. Express Check Advance of Georgia*, 591 F.3d 698, 704 (4th Cir. 2010); *Ramirez v.*
 24 *Carefusion Res., LLC*, No. 18-2852, 2019 U.S. Dist. LEXIS 112995, at *5 (S.D. Cal. July 1,
 25 2019).) CAFA expressly states that “for purposes of this section an unincorporated
 26 association or corporation is deemed to be a citizen of the state where it has its principal place
 27 of business and under whose laws it is incorporated or organized.” (28 U.S.C. § 1332(d)(10).)
 28 This is different from Section 1332(c) which has been interpreted to provide that “[a]n LLC

1 is a citizen of every state in which its owners/members are citizens.” *Johnson v. Columbia*
 2 *Properties Anchorage*, 437 F.3d 894, 899 (9th Cir. 2006).

3 17. With respect to ascertaining a corporation’s principal place of business, the
 4 United States Supreme Court has adopted the “nerve center test.” *Hertz Corp. v. Friend*,
 5 559 U.S. 77, 80-81 (2010). Under the nerve center test, a corporation’s principal place of
 6 business is where a corporation’s high-level officers direct, control and coordinate the
 7 corporation’s activities. *Id.* A corporation can only have one “nerve center.” *Id.* at 93-94.
 8 In evaluating where a corporation’s “nerve center” is located, courts will look to the center
 9 of overall direction, control, and coordination of the company and will no longer weight
 10 corporate functions, assets, or revenues in each state. *Id.*

11 18. At the time Plaintiff filed the Complaint and presently, Defendant has been a
 12 limited liability company organized under the laws of the State of Michigan. (Courtney Decl.
 13 at ¶ 4.) At all relevant times, Defendant’s company headquarters – and thus its principal place
 14 of business – has been in the State of Michigan where the majority of its executive,
 15 administrative, financial and management functions are conducted, and from where the
 16 majority of its high-level officers direct, control, and coordinate and control the company’s
 17 operations and activities. (*Id.*) Most members of Defendant’s executive team maintain their
 18 offices in the State of Michigan, while none of its executive officers reside in the State of
 19 California. (*Id.*) Accordingly, for purposes of removal under CAFA, Defendant is citizen of
 20 the State of Michigan and is not a citizen of the State of California.

21 19. Given the above, minimal diversity exists under CAFA because at least one
 22 member of the Putative Class (Plaintiff) was, at the time this action was commenced – and
 23 is still believed to be – a citizen of the State of California, while Defendant was – and still
 24 is – a citizen of the State of Michigan.¹ (28 U.S.C. § 1332(d)(2).)

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26

27 ¹ The citizenship of the Doe defendants is immaterial for the purpose of determining
 28 minimal diversity under CAFA. (28 U.S.C. §§ 1332(d)(2) and 1441(a); *See Serrano v. 180*
Connect, Inc., 478 F.3d 1018, 1021 (9th Cir. 2007).

1 **D. The Amount In Controversy Exceeds \$5,000,000 Based On A Plausible Reading**
 2 **Of The Allegations Of The Complaint.**²

3 20. Under CAFA, the claims of the individual members in a class action are
 4 aggregated to determine if the amount in controversy exceeds the sum or value of
 5 \$5,000,000. *See* 28 U.S.C. § 1332(d)(6). Congress intended federal jurisdiction to be
 6 appropriate under CAFA: “if the value of the matter in litigation exceeds \$5,000,000 either
 7 from the viewpoint of the plaintiff or the viewpoint of the defendant, and regardless of the
 8 type of relief sought (e.g., damages, injunctive relief, or declaratory relief).” Sen. Jud.
 9 Comm. Rep., S. REP. 109-14, at 42. Moreover, any doubts regarding the maintenance of
 10 interstate class actions in state or federal court should be resolved in favor of federal
 11 jurisdiction. S. Rep. 109-14, at 42-43 (“[I]f a federal court is uncertain about whether ‘all
 12 matters in controversy’ in a purported class action ‘do not in the aggregate exceed the sum
 13 or value of \$5,000,000, the court should err in favor of exercising jurisdiction over the case
 14 Overall, new section 1332(d) is intended to expand substantially federal court
 15 jurisdiction over class actions. Its provisions should be read broadly . . .”).

16 21. In determining whether the amount in controversy exceeds \$5,000,000, the
 17 Court must presume Plaintiff will prevail on each and every one of his claims. *Kenneth*
 18 *Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F.Supp. 993, 1001 (C.D. Cal. 2002)
 19 *citing Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1096 (11th Cir. 1994) (the amount in
 20 controversy analysis presumes that “plaintiff prevails on liability”); *Angus v. Shiley Inc.*,
 21 989 F.2d 142, 146 (3d Cir. 1993) (“the amount in controversy is not measured by the low
 22 end of an open-ended claim”). Moreover, the argument and facts set forth herein may
 23 appropriately be considered in determining whether the jurisdictional amount in

25 2 Defendant denies each and every allegation set forth by Plaintiff in the Complaint and
 26 denies that Plaintiff or Putative Class Members are entitled to any compensatory or statutory
 27 damages, injunctive relief, restitution, penalties, attorneys’ fees, or any other relief.
 28 Defendant also denies that any of Plaintiff’s claims are appropriate for class treatment.
 Notwithstanding the above, removal of this action is proper given that removal is based on
 the allegations asserted in the Complaint.

1 controversy is satisfied. *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 843, n.1 (9th Cir. 2002)
 2 (*citing Willingham v. Morgan*, 395 U.S. 402, 407 n.3 (1969)).

3 22. Notably, “[t]here is no obligation by defendant to support removal with
 4 production of extensive business records to prove or disprove liability and/or damages with
 5 respect to plaintiff or the putative class members at this premature (pre-certification) stage
 6 of the litigation.” *Muniz v. Pilot Travel Ctrs. LLC*, 2007 U.S. Dist. LEXIS 31515, at *15
 7 (E.D. Cal. Apr. 30, 2007). Rather, a defendant seeking removal must prove by a
 8 preponderance of the evidence the aggregate amount in controversy exceeds the
 9 jurisdictional minimum. *Jauregui v. Roadrunner Transp. Servs.*, 28 F.4th 989, 991-994 (9th
 10 Cir. 2022) (finding that the district court erred in imposing – both explicitly and in its analysis
 11 – a presumption against CAFA jurisdiction, and holding instead that the defendant was only
 12 required to show the amount in controversy by a preponderance of evidence); *Rodriguez v.*
 13 *AT&T Mobility Servs. Ltd. Liab. Co.*, 728 F.3d 975, 977 (9th Cir. 2013) (“the proper burden
 14 of proof imposed upon a defendant to establish the amount in controversy is the
 15 preponderance of the evidence standard”); *see Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d
 16 395, 400 (9th Cir. 2010) (“The amount in controversy is simply an estimate of the total
 17 amount in dispute, not a prospective assessment of defendant’s liability”); *Arias v. Residence*
 18 *Inn*, 936 F.3d 920, 922, 925 (9th Cir. 2019) (the removing defendant may rely on reasonable
 19 assumptions in estimating the amount in controversy, which “need not be proven”).

20 23. In *Dart Cherokee Basin Operating Company, LLC v. Owens*, the United States
 21 Supreme Court held, like here, the complaint is silent as to whether the amount in
 22 controversy meets CAFA’s jurisdictional threshold of \$5,000,000 “a defendant’s notice of
 23 removal need include only a *plausible* allegation that the amount in controversy exceeds the
 24 jurisdictional threshold.” 135 S. Ct. 547, 554 (2014) (emphasis added). Following *Dart*, the
 25 Ninth Circuit confirmed “a removing defendant’s notice of removal need not contain
 26 evidentiary submissions but only plausible allegations of the jurisdictional elements,” and
 27 further that “when a defendant’s allegations of removal jurisdiction are challenged, the
 28 defendant’s showing on the amount in controversy may rely on reasonable assumptions.”

1 *Salter v. Quality Carriers, Inc.*, 2020 U.S. App. LEXIS 28364, *6-7 (9th Cir. Sep. 8, 2020)
 2 (citations and internal quotation marks omitted). Further, “[n]o ‘antiremoval presumption
 3 attends cases invoking CAFA’ because ‘Congress enacted [CAFA] to facilitate adjudication
 4 of certain class actions in federal court.’” *Adams v. Toys 'R' US – Delaware, Inc.*, 2015 U.S.
 5 Dist. LEXIS 11338, at *5-6 (N.D. Cal. Jan. 29, 2015) *quoting Dart*, 135 S. Ct. at 554.) On
 6 the contrary, courts are required to interpret CAFA’s provisions broadly in favor of removal.
 7 *Jordan v. Nationstar Mortg. LLC*, 781 F.3d 1178, 1183-84 (9th Cir. 2015).

8 24. Moreover, if a plaintiff asserts statutory violations, the court must assume that
 9 the violation rate is 100% unless the plaintiff specifically alleges otherwise. *See e.g.*,
 10 *Mendoza v. OSI Indus., LLC*, No. EDCV 22-1202 JGB (SPx), 2022 U.S. Dist. LEXIS
 11 167940, at *11-18 (C.D. Cal. Sep. 16, 2022) (“Because Plaintiffs allege a ‘policy’ of
 12 requiring employees to work through their meal and rest break periods, without specifying
 13 a violation rate or offering evidence of a rate lower than that assumed by Defendant, the
 14 Court finds Defendant’s estimate of five meal break violations and five rest break
 15 violations per employee per week reasonable … [and also finds Defendant’s] assume[d]
 16 violation rate of 100% for failure to timely pay wages at the end of class members’
 17 employment and to issue accurate wage statements … reasonable and consistent with
 18 Plaintiffs’ allegations.”); *Muniz v. Pilot Travel Ctrs. LLC*, 2007 U.S. Dist. LEXIS 31515,
 19 at *12-13 (E.D. Cal. Apr. 30, 2007) (“As these allegations reveal, plaintiff includes no fact-
 20 specific allegations that would result in a putative class or violation rate that is discernibly
 21 smaller than 100%, used by defendant in its calculations. Plaintiff is the ‘master of [her]
 22 claim[s],’ and if she wanted to avoid removal, she could have alleged facts specific to her
 23 claims which would narrow the scope of the putative class or the damages sought.”) (*citing*
 24 *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987)); *see also Arreola v. The Finish*
 25 *Line*, No. 14- CV-03339-LHK, 2014 WL 6982571, at *4 (N.D. Cal. Dec. 9, 2014) (“District
 26 courts in the Ninth Circuit have permitted a defendant removing an action under CAFA to
 27 make assumptions when calculating the amount in controversy—such as assuming a 100
 28 percent violation rate, or assuming that each member of the class will have experienced

1 some type of violation— when those assumptions are reasonable in light of the allegations
 2 in the complaint.”); *Coleman v. Estes Express Lines, Inc.*, 730 F. Supp. 2d 1141, 1149
 3 (C.D. Cal. 2010) (“[C]ourts have assumed a 100% violation rate in calculating the amount
 4 in controversy when the complaint does not allege a more precise calculation.”).

5 25. Plaintiff’s Complaint does not allege a specific amount in damages.
 6 Nevertheless, without admitting that Plaintiff could recover any damages whatsoever, a
 7 plausible reading of the factual allegations and causes of action set forth in the Complaint³
 8 conservatively places an aggregate amount in controversy exceeding \$5,000,000 exclusive of
 9 attorneys’ fees, interest, and costs, as follows:

10 ***Failure to Pay Overtime and Double Time Wages (Second Cause of Action)***

11 26. The Complaint alleges that Defendant “did not pay Plaintiff and other
 12 similarly situated employees for all hours worked on any given day or in any given
 13 workweek” and that Putative Class Members were “regularly compelled to work off the
 14 clock.” (Complaint at ¶ 20-23.) The Complaint further alleges that during the relevant
 15 time period, Defendant “Plaintiff and Class Members frequently worked in excess of ten
 16 (10) hours and often times worked in excess of twelve (12) hours in one (1) workday” but
 17 “failed to pay all premium overtime wages.” (Complaint at ¶ 50-53.)

18 27. Thus, while Defendant completely denies Plaintiff is entitled to recover any
 19 overtime damages, based on the allegations in the Complaint, it is plausible that Plaintiff is
 20 seeking to recover at least one hour of unpaid overtime wages per workweek for all Putative
 21 Class Members, which would place over \$1,134,000 in controversy in connection with his
 22 overtime claim (\$21.00 average hourly wage rate x 1 hour per week x 36,000 workweeks⁴).
 23

24 ³ See e.g. *Lucas v. Michael Kors (USA) Inc.*, No. CV 18-1608-MWF (MRWx), 2018
 25 U.S. Dist. LEXIS 78510, at *8 (C.D. Cal. May 9, 2018) (“Defendants may use reasonable
 assumptions in calculating the amount in controversy for purposes of removal.”).

26 ⁴ Although the Putative Class Period spans from June 21, 2019 to present, the
 27 calculations used in this Notice of Removal are based on Defendant’s records for Putative
 28 Class Members during a shorter period from July 13, 2019 to May 22, 2023. (Courtney Decl.
 at ¶ 7-9.) Defendant reserves the right to later address the potential amount in controversy in
 connection with Plaintiff’s claims for the full Putative Class Period.

1 (Courtney Decl. at ¶¶ 6-9, Complaint at ¶¶ 20-23, 48-58.)⁵

2 ***Improper Meal Periods (Third Cause of Action)***

3 28. The Complaint alleges that “Plaintiff and Class Members did not receive meal
 4 periods.” (Complaint at ¶ 64.) More specifically, the Complaint asserts that “Plaintiff and
 5 Class Members were forced to work in excess of five (5) hours per day on a regular basis
 6 without being provided a daily thirty (30) minute restrictive-free meal period” and that
 7 “Defendants’ work demands and pressure from Defendants’ management, … as a result of
 8 an implemented policy, regularly required Plaintiff and Class Members to return to work
 9 before completing (constitutes a missed meal period) an uninterrupted meal period of thirty
 10 (30) minutes.” (*Id.*) The Complaint goes on to allege that, while “Plaintiff and Class Members
 11 frequently worked in excess of ten (10) hours and often times worked in excess of twelve
 12 (12) hours in one (1) workday,” they “were never provided a second, uninterrupted meal
 13 period of thirty (30) minutes for those shifts.” (*Id.*) Additionally, the Complaint contends
 14 “Defendants never compensated Plaintiff and Class Members [an] additional hour of pay at
 15 their regular rate as required by California law when meal periods were not provided.” (*Id.*)

16 29. Thus, while Defendant completely denies Plaintiff is entitled to recover any meal
 17 period premiums, based on the allegations in the Complaint, it is plausible that Plaintiff is
 18 seeking to recover at least one meal period premium per workweek for all Putative Class
 19 Members, which would place over \$756,000 in controversy in connection with his meal period
 20 claim (\$21.00 average hourly wage rate x 1 meal period per week x 36,000 workweeks).

21 (Courtney Decl. at ¶¶ 7-8; Complaint at ¶¶ 24-27, 34, 59-65.)

22 ///

23
 24 ⁵ For purposes of meeting the jurisdictional requirement under CAFA, and based on
 25 Plaintiff’s allegation that Putative Class Members “frequently worked a minimum of ten
 26 (10) hours in a single day and often times worked over twelve (12) hours or more in a
 27 single day,” Defendant conservatively calculated the amount in controversy in connection
 28 with Plaintiff’s overtime claim without calculating the potential minimum wages in
 controversy. (Complaint at ¶ 21.) Defendant reserves the right to later address the potential
 amount in controversy in connection with Plaintiff’s minimum wage claim.

Improper Rest Periods

30. The Complaint alleges, “Plaintiff and Class Members were systematically not permitted and/or authorized and/or paid to take one (1) ten (10) minute rest period (off duty for ten consecutive minutes) for every four (4) hours worked or major fraction thereof...” (Complaint at ¶ 70.) Moreover, the Complaint alleges, “that Defendant “never compensated Plaintiff and Class Members one additional hour of pay at their regular rate as required by California law for each day on which rest periods were not authorized or permitted.” (*Id.* at ¶ 29.)

31. Thus, while Defendant completely denies Plaintiff is entitled to recover any rest period premiums, based on the allegations in the Complaint, it is plausible that Plaintiff is seeking to recover at least one rest period premium per workweek for all Putative Class Members, which would place over \$756,000 in controversy in connection with his rest period claim (\$21.00 average hourly wage rate x 1 rest period per week x 36,000 workweeks). (Courtney Decl. at ¶¶ 7-8; Complaint at ¶¶ 28, 29, 34, 66-72.)

Improper Wage Statements

32. Plaintiff alleges that he and other Class Members “were intentionally not provided accurate wage statements, pursuant to Labor Code section 226(a)...” (Complaint at ¶ 80.) Specifically, Plaintiff alleges that the rates, hours worked, miscalculation of overtime rate based on commission rate and hourly rate, off-the-clock hours worked, and premium wage payments for missed meal and rest breaks should have been but were not itemized on the wage statements issued to Plaintiff and Class Members. (Complaint at ¶ 81.)

33. During the one-year statute of limitations period applicable to Labor Code section 226 (*i.e.*, June 21, 2022 to the present), Defendant has issued in excess of 4,300 wage statements to over 295 Putative Class Members. (Courtney Decl. at ¶ 9.) Thus, while Defendant completely denies Plaintiff is entitled to recover any wage statement penalties, based on the allegations in the Complaint, it is plausible that Plaintiff has placed over \$415,250 in controversy in connection with his wage statement claim (\$50 per first wage

1 statement x 295 Putative Class Members, plus \$100 per each subsequent wage statement x
 2 4,005 pay periods worked by Putative Class Members between June 21, 2022 and the
 3 present, up to a maximum of \$4,000 per Putative Class Member). (Complaint at ¶¶ 78-
 4 82.) *See Labor Code § 226(e)(1); see also, e.g., Lucas, 2018 U.S. Dist. LEXIS 78510, at*
 5 *25 (noting that “it is not unreasonable to assume that, with this many violations alleged
 6 by Plaintiff, every one of the wage statements issued during the one-year period could very
 7 likely have been noncompliant.”).

8 ***Wages Not Paid Upon Separation***

9 34. The Complaint alleges that Defendant “willfully violated Labor Code sections
 10 201-203 by failing to provide all owed wages at separation from employment.” (Complaint
 11 at ¶ 87.)

12 35. While Defendant completely denies Plaintiff and Putative Class Members
 13 are entitled to recover any waiting time penalties, based on the allegations in the
 14 Complaint, it is plausible that Plaintiff has placed over \$1,814,400 in controversy in
 15 connection with his claim for waiting time penalties (360 Putative Class Members x
 16 \$21.00 average hourly rate x 8 hours x 30 days). (Courtney Decl. at ¶¶ 7-9; Complaint
 17 at ¶¶ 30, 32, 86-88.) This calculation is further supported by the fact that Plaintiff has
 18 tied his waiting time penalties claim to Defendant’s alleged failure to pay minimum wage,
 19 pay overtime wage, provide proper meal periods, and provide proper rest periods.
 20 (Complaint at ¶ 30.) As such, it is reasonable for Defendant to assume Plaintiff is seeking
 21 damages for each Putative Class Member that would, in turn, entitle every individual who
 22 separated during the applicable three-year limitations period to the full amount of waiting
 23 time penalties. Further, the caselaw supports application of a 100% violation rate for
 24 alleged statutory violations, given that Plaintiff would only need to establish that each
 25 Putative Class Member was denied just one minute of minimum wage, one minute of

1 overtime, one meal period penalty, or one rest period penalty during the limitations
 2 period.⁶

3 ***Failure to Reimburse Expenses***

4 36. Plaintiff alleges that he and “Reimbursement Class Members have incurred,
 5 and are continuing to incur, necessary expenditures and losses in direct consequence of the
 6 discharge of duties, or of obedience to Defendants’ directions as an employer...”
 7 (Complaint at ¶ 97.) Plaintiff alleges these expenditures include but are not limited to cell
 8 phones, Internet, home office, utilities, and computers. (*Id.* at ¶ 96.) Plaintiff alleges
 9 Defendant “intentionally and improperly failed to reimburse necessary expenditures
 10 Plaintiff and Reimbursement Class Members incurred.” (*Id.* at ¶ 100.)

11 37. Thus, while Defendant completely denies Plaintiff is entitled to recover any
 12 expense reimbursements, based on the allegations in the Complaint, it is plausible that
 13 Plaintiff is seeking to recover, on average, at least \$15.00 per week for all Putative Class
 14 Members, which would place \$540,000 in controversy in connection with his expense

16 ⁶ See *Chavez v. Pratt (Robert Mann Packaging), LLC*, No.19-cv-00719-NC, 2019
 17 U.S. Dist. LEXIS 59399, at *9-10 (N.D. Cal. April 5, 2019) (“By tying the unpaid final
 18 wage claim to his other claims, [plaintiff] makes [defendant’s] assumption of 100%
 19 violation for unpaid wages reasonable...”); *Kastler v. Oh My Greens, Inc.*, No. 19-cv-
 20 02411-HSG, 2019 U.S. Dist. LEXIS 185484, at *16 (N.D. Cal. Oct. 25, 2019) (approving
 21 100% violation rate when calculating waiting time penalties because Plaintiff tied waiting
 22 time penalties claim to his other claims); *Mackall v. HealthSource Global Staffing, Inc.*,
 23 No. 16-cv-03810-WHO, 2016 U.S. Dist. LEXIS 119292, at *16-19 (N.D. Cal. Sep. 2,
 24 2016) (upholding defendant’s assumed 100% violation rate for waiting time penalties in
 25 CAFA removal where the complaint alleged overtime, meal period and rest break
 26 violations and a willful failure to timely pay final wages, and plaintiff failed to offer any
 27 alternative calculation in a lower amount); *Byrd v. Masonite Corp.*, No. EDCV 16-35 JGB
 28 (KKx), 2016 U.S. Dist. LEXIS 60078, at *9 (C.D. Cal. May 5, 2016) (Bernal, J.) (for
 derivative penalties which are based on a “laundry list” of other potential violations, it is
 reasonable for a removing defendant to assume a 100% violation rate for each terminated
 employee); *Bell v. Home Depot U.S.A., Inc.*, No. 2:12-cv-02499-GEB-CKD, 2014 U.S.
 Dist. LEXIS 78353, at *3 (E.D. Cal. June 5, 2014) (“These allegations of unpaid wages
 [including uncompensated overtime, meal period and rest period allegations] support
 Defendants’ position that it is more likely than not that Plaintiffs’ section 203 claim places
 in controversy 30-days of waiting time penalties...”).

1 reimbursement claim (\$15.00 per week x 36,000 workweeks). (Courtney Decl. at ¶¶ 7-9;
 2 Complaint at ¶¶ 35, 90-104.)

3 ***Attorneys' Fees***

4 38. Plaintiff also seeks an unspecified amount of attorneys' fees in connection with
 5 his putative class claims for unpaid minimum wages, unpaid overtime wages, failure to
 6 provide accurate itemized wage statements, and failure to reimburse expenses. (Complaint
 7 at ¶¶ 56, 82, 95, 98, 101, 104, Prayer for Relief.) The Court must consider and include these
 8 fees and costs in determining the amount in controversy. *Goldberg v. CPC Int'l, Inc.* 678
 9 F.2d 1365, 1367 (9th Cir. 1982), cert. denied, 459 U.S. 945 (1982); *Galt G/S v. JSS*
 10 *Scandinavia* 142 F.3d 1150, 1155-56 (9th Cir. 1998); *Solorzano v. Alsco Inc.*, 2021 U.S. Dist.
 11 LEXIS 129517 at *3 (C.D. Cal. July 12, 2021) ("Future attorney's fees must be included in
 12 the amount in controversy.") (citations omitted).). Attorneys' fee awards in California wage-
 13 hour class actions can easily total several hundred thousands of dollars or more. *See, e.g.*,
 14 *McGuigan v. City of San Diego*, 183 Cal. App. 4th 610, 638 (2010) (noting attorneys' fees
 15 paid in settlement of \$1.6 million); *Pellegrino v. Robert Half Int'l, Inc.*, 182 Cal. App. 4th
 16 278, 287, 296 (2010) (affirming \$558,926.85 in attorneys' fees in exemption misclassification
 17 class case, but reversing as to multiplier); *Vasquez v. California*, 45 Cal. 4th 243, 249 (2008)
 18 (noting award of \$435,000 in attorneys' fees for class claims involving failure to pay wages,
 19 liquidated damages, penalties and waiting time penalties). Moreover, the Ninth Circuit
 20 recently concluded "that the amount in controversy is not limited to damages incurred prior
 21 to removal—for example, it is not limited to wages a plaintiff-employee would have earned
 22 before removal (as opposed to after removal). Rather, the amount in controversy is
 23 determined by the complaint operative at the time of removal and encompasses all relief a
 24 court may grant on that complaint if the plaintiff is victorious." *Chavez v. JPMorgan Chase*
 25 & Co., 888 F.3d 413, 414-15 (9th Cir. 2018); *see also Baker v. Tech Data Corp.*, 2022 U.S.
 26 Dist. LEXIS 66950 at *4 (C.D. Cal. Apr. 11, 2022) ("Recent estimates for the number of
 27 hours expended through trial for employment cases in this district have ranged from 100 to
 28 300 hours."); *Lucas v. Michael Kors (USA) Inc.*, No. CV 18-1608-MWF (MRWx), 2018 U.S.

Dist. LEXIS 78510, at *32 (C.D. Cal. May 9, 2018) (“unaccrued post-removal attorneys’ fees can be factored into the amount in controversy.”).

39. “Courts in this circuit have held that, for purposes of calculating the amount in controversy in a wage-and-hour class action, removing defendants can reasonably assume that plaintiffs are entitled to attorney fees valued at approximately twenty-five percent of the projected damages.” *Fong v. Regis Corp.*, No. C 13-04497 RS, 2014 U.S. Dist. LEXIS 275, at *23 (N.D. Cal. Jan. 2, 2014); *see also Herrera v. Carmax Auto Superstores Cal., LLC*, No. EDCV-14-776-MWF (VBKx), 2014 U.S. Dist. LEXIS 188729, at *12 (C.D. Cal. June 12, 2014) (“Substantial authority supports a ‘benchmark’ 25 percent attorneys’ fees figure to be added to any claim for which attorneys’ fees are available.”); *Hamilton v. Wal-Mart Stores, Inc.*, No. ED CV 17-01415-AB (KKx), 2017 U.S. Dist. LEXIS 162856, at *16 (C.D. Cal. Sep. 29, 2017) (“The Ninth Circuit has allowed an estimate fee award of 25% of a plaintiff’s damages in calculating the amount in controversy under CAFA.”); *Gutierrez v. Stericycle, Inc.*, No. LA CV15-08187 JAK (JEMx), 2017 U.S. Dist. LEXIS 20975, at *51 (C.D. Cal. Feb. 14, 2017) (“it is appropriate to include in the calculation of the amount in controversy a potential fee award of 25% of the value of certain of the substantive claims.”).

40. Thus, while Defendant completely denies Plaintiff is entitled to recover any damages or corresponding attorneys' fees, the Court should consider attorneys' fees of at least \$1,353,912, a conservative estimate at 25% of the aggregate amount in controversy calculated in Paragraphs 26-37 above in connection with Plaintiff's putative class claims for unpaid overtime wages, wage statement violations, and failure to timely pay final wages. *See, e.g., Oda v. Gucci Am., Inc.*, 2015 U.S. Dist. LEXIS 1672, at *11-13 (C.D. Cal. 2015) (finding the defendant's assumptions regarding attorneys' fees to be "reasonable" on removal where the defendant stated "Plaintiffs would recover a 25 percent fee" totaling "\$1,329,245," based on "the amount in controversy before attorneys' fees" of "\$5,316,978").

41. Thus, for the reasons discussed above, and without conceding or admitting to the underlying merit of Plaintiff's claims, but rather expressly denying all allegations set

1 forth in the Complaint, it is plausible that the aggregate amount in controversy in
2 connection with Plaintiff's putative class claims (over **\$6,769,562** for the period between
3 June 21, 2022 to May 22, 2023) surpasses the \$5,000,000 jurisdictional threshold required
4 under CAFA.

5 **NOTICE TO ALL PARTIES AND STATE COURT**

6 42. In accordance with 28 U.S.C. § 1446(d), the undersigned counsel certifies that
7 a copy of this Notice of Removal and all supporting papers will be served promptly on
8 Plaintiff's counsel and filed with the Clerk of the Riverside Superior Court. Therefore, all
9 procedural requirements under 28 U.S.C. § 1446 will be followed and satisfied.

10 **CONCLUSION**

11 43. Based on the foregoing, Defendant hereby removes the above-captioned
12 action from the Riverside Superior Court to this Court based on CAFA requirements (28
13 U.S.C. §§ 1332(d), 1441, 1446 and 1453) and respectfully requests that this Court retain
14 jurisdiction for all further proceedings.

15
16 Dated: July 24, 2023

JACKSON LEWIS P.C.

17
18
19 By: *Chad D. Bernard*
20 *Eric J. Gitig*
21 *Martin P. Vigodnier*
22 *Nareg A. Kourouyan*

23 4859-4242-2383, v. 1